

FIRST REGULAR SESSION

SENATE BILL NO. 360

93RD GENERAL ASSEMBLY

INTRODUCED BY SENATOR BRAY.

Read 1st time February 15, 2005, and ordered printed.

TERRY L. SPIELER, Secretary.

1471S.011

AN ACT

To repeal sections 143.091, 143.121, 143.225, 143.261, 143.431, 143.451, 143.461, 143.471, 144.010, 144.030, and 144.190, RSMo, and to enact in lieu thereof nine new sections relating to taxation, with an effective date.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Sections 143.091, 143.121, 143.225, 143.261, 143.431, 143.451, 143.461, 143.471, 144.010, 144.030, and 144.190, RSMo, are repealed and nine new sections enacted in lieu thereof, to be known as sections 143.091, 143.121, 143.225, 143.431, 143.434, 143.471, 144.010, 144.030, and 144.190, to read as follows:

143.091. **1.** Any term used in sections 143.011 to 143.996 shall have the same meaning as when used in a comparable context in the laws of the United States relating to federal income taxes, unless a different meaning is clearly required by the provisions of sections 143.011 to 143.996. Any reference in sections 143.011 to 143.996 to the laws of the United States shall mean the provisions of the Internal Revenue Code of 1986, and amendments thereto **enacted on or before January 1, 2004**, and other provisions of the laws of the United States relating to federal income taxes, as the same may be or become effective[, at any time or from time to time.] **on or before January 1, 2004**, for the taxable year.

2. Within sixty days after an amendment of the Internal Revenue Code of 1986, is enacted, the director of revenue shall prepare and submit to the governor, the speaker of the house of representatives, and the president pro tempore of the senate with a report which outlines:

- (1) The changes of the Internal Revenue Code of 1986;**
- (2) The impact of those changes on state revenues; and**
- (3) The impact of those changes on the various classes and types of**

EXPLANATION--Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

taxpayers.

143.121. 1. The Missouri adjusted gross income of a resident individual shall be the taxpayer's federal adjusted gross income subject to the modifications in this section.

2. There shall be added to the taxpayer's federal adjusted gross income:

(a) The amount of any federal income tax refund received for a prior year which resulted in a Missouri income tax benefit;

(b) Interest on certain governmental obligations excluded from federal gross income by Section 103 of the Internal Revenue Code. The previous sentence shall not apply to interest on obligations of the state of Missouri or any of its political subdivisions or authorities and shall not apply to the interest described in subdivision (a) of subsection 3 of this section. The amount added pursuant to this paragraph shall be reduced by the amounts applicable to such interest that would have been deductible in computing the taxable income of the taxpayer except only for the application of Section 265 of the Internal Revenue Code. The reduction shall only be made if it is at least five hundred dollars;

(c) The amount of any deduction that is included in the computation of federal taxable income pursuant to Section 168 of the Internal Revenue Code as amended by the Job Creation and Worker Assistance Act of 2002 to the extent the amount deducted relates to property purchased on or after July 1, 2002, but before July 1, 2003, and to the extent the amount deducted exceeds the amount that would have been deductible pursuant to Section 168 of the Internal Revenue Code of 1986 as in effect on January 1, 2002; [and]

(d) The amount of any deduction that is included in the computation of federal taxable income under Section 168 of the Internal Revenue Code as amended by the Job Creation and Worker Assistance Act of 2002, and the Jobs and Growth Tax Relief Reconciliation Act of 2003, to the extent the amount deducted relates to property purchased in any taxable year beginning after August 31, 2004, and to the extent the amount deducted exceeds the amount that would have been deductible under Section 168 of the Internal Revenue Code of 1986 as in effect on January 1, 2002; and

(e) The amount of any deduction that is included in the computation of federal taxable income for net operating loss allowed by Section 172 of the Internal Revenue Code of 1986, as amended, other than the deduction allowed by Section 172(b)(1)(G) and Section 172(i) of the Internal Revenue Code of 1986, as amended, for a net operating loss the taxpayer claims in the tax year in which the net operating loss occurred or carries forward for a period of more than twenty years and carries backward for more than two years. Any amount of net operating loss taken against federal income taxes but disallowed against Missouri income taxes pursuant to this paragraph since July 1, 2002, may be carried forward and taken against any loss on the Missouri income tax return for a period of not more than twenty years from the year of the initial loss.

3. There shall be subtracted from the taxpayer's federal adjusted gross income the following amounts to the extent included in federal adjusted gross income:

(a) Interest or dividends on obligations of the United States and its territories and possessions or of any authority, commission or instrumentality of the United States to the extent exempt from Missouri income taxes pursuant to the laws of the United States. The amount subtracted pursuant to this paragraph shall be reduced by any interest on indebtedness incurred to carry the described obligations or securities and by any expenses incurred in the production of interest or dividend income described in this paragraph. The reduction in the previous sentence shall only apply to the extent that such expenses including amortizable bond premiums are deducted in determining the taxpayer's federal adjusted gross income or included in the taxpayer's Missouri itemized deduction. The reduction shall only be made if the expenses total at least five hundred dollars;

(b) The portion of any gain, from the sale or other disposition of property having a higher adjusted basis to the taxpayer for Missouri income tax purposes than for federal income tax purposes on December 31, 1972, that does not exceed such difference in basis. If a gain is considered a long-term capital gain for federal income tax purposes, the modification shall be limited to one-half of such portion of the gain;

(c) The amount necessary to prevent the taxation pursuant to this chapter of any annuity or other amount of income or gain which was properly included in income or gain and was taxed pursuant to the laws of Missouri for a taxable year prior to January 1, 1973, to the taxpayer, or to a decedent by reason of whose death the taxpayer acquired the right to receive the income or gain, or to a trust or estate from which the taxpayer received the income or gain;

(d) Accumulation distributions received by a taxpayer as a beneficiary of a trust to the extent that the same are included in federal adjusted gross income;

(e) The amount of any state income tax refund for a prior year which was included in the federal adjusted gross income;

(f) The portion of capital gain specified in section 135.357, RSMo, that would otherwise be included in federal adjusted gross income; [and]

(g) The amount that would have been deducted in the computation of federal taxable income pursuant to Section 168 of the Internal Revenue Code as in effect on January 1, 2002, to the extent that amount relates to property purchased on or after July 1, 2002, but before July 1, 2003, and to the extent that amount exceeds the amount actually deducted pursuant to Section 168 of the Internal Revenue Code as amended by the Job Creation and Worker Assistance Act of 2002; **and**

(h) The amount that would have been deducted in the computation of federal taxable income under Section 168 of the Internal Revenue Code as in effect on January 1, 2002, to the extent that amount relates to property purchased in any

taxable year beginning after August 31, 2004, and to the extent that amount exceeds the amount actually deducted under Section 168 of the Internal Revenue Code as amended by the Job Creation and Worker Assistance Act of 2002, and the Jobs and Growth Tax Relief Reconciliation Act of 2003.

4. There shall be added to or subtracted from the taxpayer's federal adjusted gross income the taxpayer's share of the Missouri fiduciary adjustment provided in section 143.351.

5. There shall be added to or subtracted from the taxpayer's federal adjusted gross income the modifications provided in section 143.411.

143.225. 1. The director of revenue, by regulation, may require an employer to timely remit the unpaid amount required to be deducted and withheld by section 143.191 at the end of any quarter-monthly period, only if the employer was required to deduct and withhold six thousand dollars or more in each of at least two months during the prior twelve months.

2. The director may increase the monthly requirement to more than six thousand dollars or otherwise narrow the application of the quarter-monthly remittance system authorized by this section. The director may not require the remittance of withheld taxes more often than monthly unless authorized by this section.

3. A remittance shall be timely if mailed as provided in section 143.851 within three banking days after the end of the quarter-monthly period or if received by the director or deposited in a depository designated by the director within four banking days after the end of the quarter-monthly period.

4. [The unpaid amount shall be after a reduction for the compensation provided by section 143.261.] The unpaid amount at the end of a quarter-monthly period shall not include unpaid amounts for any prior quarter-monthly period.

5. For purposes of this section, "quarter-monthly period" means:

- (1) The first seven days of a calendar month;
- (2) The eighth to fifteenth day of a calendar month;
- (3) The sixteenth to twenty-second day of a calendar month; and
- (4) The portion following the twenty-second day of a calendar month.

6. (1) In the case of an underpayment of any amount required to be paid pursuant to this section, an employer shall be liable for a penalty in lieu of all other penalties, interest or additions to tax imposed by this chapter for violating this section. The penalty shall be five percent of the amount of the underpayment determined under subdivision (2) of this subsection.

(2) The amount of the underpayment shall be the excess of:

- (a) Ninety percent of the unpaid amount at the end of a quarter-monthly period; over
- (b) The amount, if any, of the timely remittance for the quarter-monthly period.

7. (1) The penalty with respect to any quarter-monthly period shall not be imposed if the employer's timely remittance for the quarter-monthly period equals or exceeds

one-fourth of the average monthly withholding tax liability of the employer for the preceding calendar year. The month of highest liability and the month of lowest liability shall be excluded in computing the average. This subdivision shall apply only to an employer who had a withholding tax liability for at least six months of the previous calendar year.

(2) The penalty shall not be imposed if the employer establishes that the failure to make a timely remittance of at least ninety percent was due to reasonable cause, and not due to willful neglect.

(3) The penalty shall not be imposed against any employer for the first two months the employer is obligated to make quarter-monthly remittance of withholding taxes.

8. Tax amounts remitted under this section shall be treated as payments on the employer's monthly return required by subsection 2 of section 143.221. Tax amounts remitted under this section shall be deemed to have been paid on the last day prescribed for filing the return. The preceding sentence shall apply in computing [compensation under section 143.261,] interest, penalties and additions to tax and for purposes of all sections of chapter 143, except this section.

9. The director of revenue may prescribe the use of an electronic funds payment system for the payment of withholding taxes by any employer subject to the requirement of quarter-monthly remittance as provided in this section.

143.431. 1. The Missouri taxable income of a corporation taxable under sections 143.011 to 143.996 shall be so much of its federal taxable income for the taxable year, with the modifications specified in subsections 2 to 4 of this section, as is derived from sources within Missouri as provided in section [143.451] **32.200, RSMo**. The tax of a corporation shall be computed on its Missouri taxable income at the rates provided in section 143.071.

2. There shall be added to or subtracted from federal taxable income the modifications to adjusted gross income provided in section 143.121 and the applicable modifications to itemized deductions provided in section 143.141. There shall be subtracted the federal income tax deduction provided in section 143.171. There shall be subtracted, to the extent included in federal taxable income, corporate dividends from sources within Missouri.

3. (1) If an affiliated group of corporations files a consolidated income tax return for the taxable year for federal income tax purposes and fifty percent or more of its income is derived from sources within this state as determined in accordance with section [143.451] **32.200, RSMo**, then it may elect to file a Missouri consolidated income tax return. The federal consolidated taxable income of the electing affiliated group for the taxable year shall be its federal taxable income.

(2) So long as a federal consolidated income tax return is filed, an election made by an affiliated group of corporations to file a Missouri consolidated income tax return may be withdrawn or revoked only upon substantial change in the law or regulations adversely changing tax liability under this chapter, or with permission of the director of revenue upon

the showing of good cause for such action. After such a withdrawal or revocation with respect to an affiliated group, it may not file a Missouri consolidated income tax return for five years thereafter, except with the approval of the director of revenue, and subject to such terms and conditions as he may prescribe.

(3) No corporation which is part of an affiliated group of corporations filing a Missouri consolidated income tax return shall be required to file a separate Missouri corporate income tax return for the taxable year.

(4) For each taxable year an affiliated group of corporations filing a federal consolidated income tax return does not file a Missouri consolidated income tax return, for purposes of computing the Missouri income tax, the federal taxable income of each member of the affiliated group shall be determined as if a separate federal income tax return had been filed by each such member.

(5) The director of revenue may prescribe such regulations not inconsistent with the provisions of this chapter as he may deem necessary in order that the tax liability of any affiliated group of corporations making a Missouri consolidated income tax return, and of each corporation in the group, before, during, and after the period of affiliation, may be returned, determined, computed, assessed, collected, and adjusted, in such manner as clearly to reflect the Missouri taxable income derived from sources within this state and in order to prevent avoidance of such tax liability.

4. If a net operating loss deduction is allowed for the taxable year, there shall be added to federal taxable income the amount of the net operating loss modification for each loss year as to which a portion of the net operating loss deduction is attributable. As used in this subsection, the following terms mean:

(1) "Loss year", the taxable year in which there occurs a federal net operating loss that is carried back or carried forward in whole or in part to another taxable year;

(2) "Net addition modification", for any taxable year, the amount by which the sum of all required additions to federal taxable income provided in this chapter, except for the net operating loss modification, exceeds the combined sum of the amount of all required subtractions from federal taxable income provided in this chapter;

(3) "Net operating loss deduction", a net operating loss deduction allowed for federal income tax purposes under Section 172 of the Internal Revenue Code of 1986, as amended, or a net operating loss deduction allowed for Missouri income tax purposes under paragraph (d) of subsection 2 of section 143.121, but not including any net operating loss deduction that is allowed for federal income tax purposes but disallowed for Missouri income tax purposes under paragraph (d) of subsection 2 of section 143.121;

(4) "Net operating loss modification", an amount equal to the lesser of the amount of the net operating loss deduction attributable to that loss year or the amount by which the total net operating loss in the loss year is less than the sum of:

- (a) The net addition modification for that loss year; and
- (b) The cumulative net operating loss deductions attributable to that loss year allowed for the taxable year and all prior taxable years.

5. For all tax years ending on or after July 1, 2002, federal taxable income may be a positive or negative amount. Subsection 4 of this section shall be effective for all tax years with a net operating loss deduction attributable to a loss year ending on or after July 1, 2002, and the net operating loss modification shall only apply to loss years ending on or after July 1, 2002.

143.434. 1. As used in this chapter, the following terms mean:

(1) "Affiliated group", one or more chains of corporations that are connected through stock ownership with a common parent corporation that meet the following requirements:

(a) At least eighty percent of the stock of each of the corporations in the group, excluding the common parent corporation, is owned by one or more of the other corporations in the group; and

(b) The common parent directly owns at least eighty percent of the stock of at least one of the corporations in the group. "Affiliated group" does not include corporations that are qualified to do business but are not otherwise doing business in this state. For purposes of this section "stock" does not include nonvoting stock which is limited and preferred as to dividends;

(2) "Common ownership", the direct or indirect control or ownership of more than fifty percent of the outstanding voting stock of:

(a) A parent-subsidiary controlled group as defined in Section 1563 of the United States Internal Revenue Code of 1986, as amended, except that the amount of fifty percent shall be substituted for all references of "80 percent" in such definition;

(b) A brother-sister controlled group as defined in Section 1563 of the United States Internal Revenue Code of 1986, as amended, except that the amount of fifty percent shall be substituted for all references of "80 percent" in such definition; or

(c) Three or more corporations each of which is a member of a group of corporations described in subdivision (1) of this subsection, and one of which is:

a. A common parent corporation included in a group of corporations described in paragraph (a) of subdivision (1) of this subsection; and

b. Included in a group of corporations described in paragraph (b) of subdivision (1) of this subsection. Ownership of outstanding voting stock shall be determined in accordance with Section 1563 of the United States Internal Revenue Code of 1986, as amended;

(3) "Corporate return" or "return", includes a combined report;

(4) "Doing business", any transaction in the course of its business by a domestic corporation, or by a foreign corporation qualified to do or doing intrastate business in this state. Doing business includes:

(a) The right to do business through incorporation or qualification;

(b) The owning, renting, or leasing of real or personal property within this state; and

(c) The participation in joint ventures, working and operating agreements, the performance of which takes place in this state;

(5) "Foreign corporation", a corporation that is not incorporated or organized pursuant to the laws of this state;

(6) "Foreign operating company", a corporation that:

(a) Is incorporated in the United States; and

(b) Eighty percent or more of whose business activity is conducted without the United States.

"Foreign operating company" does not include a corporation that qualifies for the Puerto Rico and Possession Tax Credit provided pursuant to Section 936 of the United States Internal Revenue Code of 1986, as amended;

(7) "Unitary group", a group of corporations that:

(a) Are related through common ownership; and

(b) By a preponderance of the evidence as determined by a court of competent jurisdiction or the director, are economically interdependent with one another as demonstrated by the following factors:

a. Centralized management;

b. Functional integration; and

c. Economies of scale;

(8) "Water's edge combined report", a report combining the income and activities of:

(a) All members of a unitary group that are:

a. Corporations organized or incorporated in the United States, including those corporations qualifying for the Puerto Rico and Possession Tax Credit as provided in Section 936 of the United States Internal Revenue Code of 1986, as amended; and

b. Corporations organized or incorporated without the United States that meet the threshold level of business activity; and

(b) An affiliated group electing to file water's edge combined report pursuant to subdivision (1) of subsection 2 of this section.

2. (1) If any corporation is doing business in Missouri and is a member of

a unitary group, the unitary group shall file a water's edge combined report. A group of corporations that are not otherwise a unitary group may elect to file a water's edge combined report if each member of the group is:

- (a) Doing business in Missouri;
- (b) Part of the same affiliate group; and
- (c) Qualified pursuant to Section 1501 of the United States Internal Revenue Code of 1986, as amended, to file a federal consolidated return.

(2) Each corporation within the affiliated group that is doing business in Missouri shall file a combined report. If an affiliated group elects to file a combined report, each corporation within the affiliated group that is doing business in Missouri shall file a combined report.

(3) A corporation that elects to file a water's edge combined report pursuant to this section shall not thereafter elect to file a separate return without the consent of the director.

3. If two or more corporations, whether or not organized or doing business in this state, and whether or not affiliated, are owned or controlled directly or indirectly by the same interests, the director shall be authorized to distribute, apportion, or allocate gross income or deductions between or among such corporations, if it determines that such distribution, apportionment, or allocation is necessary in order to prevent evasion of taxes or clearly to reflect the income of any such corporations.

4. The director shall, by rule, prescribe for adjustments to Missouri taxable income when, solely by reason of the enactment of this section, a taxpayer would otherwise receive or have received a double tax benefit or suffer or have suffered a double tax detriment. However, the director may not make any adjustment pursuant to this section which will result in an increase or decrease of tax liability that is less than twenty-five dollars.

5. A group filing a combined report shall calculate federal taxable income of the combined group by:

- (1) Computing federal taxable income on a separate return basis;
- (2) Combining income or loss of the members included in the combined report; and

(3) Making appropriate eliminations and adjustments between members included in the combined report.

For purposes of this subsection, if an entity does not calculate federal taxable income, then the federal taxable income shall be calculated based on the applicable federal tax laws.

6. For purposes of the apportionment provisions within section 32.200,

RSMo, corporations filing a combined report shall not include intercompany sales or other transactions between the corporations included in the combined report when determining the sales factor. Intercompany rents between members of a combined report may not be considered in the computation of the property factor.

7. The director of revenue may prescribe such regulations not inconsistent with the provisions of this chapter as the director may deem necessary in order that the tax liability of any affiliated group of corporations making a Missouri consolidated income tax return, and of each corporation in the group, before, during, and after the period of affiliation, may be returned, determined, computed, assessed, collected, and adjusted, in such manner as clearly to reflect the Missouri taxable income derived from sources within the state and in order to prevent avoidance of such tax liability.

8. Any rule or portion of a rule, as that term is defined in section 536.010, RSMo, that is created under the authority delegated in this section shall become effective only if it complies with and is subject to all of the provisions of chapter 536, RSMo, and, if applicable, section 536.028, RSMo. This section and chapter 536, RSMo, are nonseverable and if any of the powers vested with the general assembly pursuant to chapter 536, RSMo, to review, to delay the effective date, or to disapprove and annul a rule are subsequently held unconstitutional, then the grant of rulemaking authority and any rule proposed or adopted after the effective date of this act, shall be invalid and void.

143.471. 1. An S corporation, as defined by Section 1361 (a)(1) of the Internal Revenue Code, shall not be subject to the taxes imposed by section 143.071, or other sections imposing income tax on corporations.

2. A shareholder of an S corporation shall determine such shareholder's S corporation modification and pro rata share, including its character, by applying the following:

(1) Any modification described in sections 143.121 and 143.141 which relates to an item of S corporation income, gain, loss, or deduction shall be made in accordance with the shareholder's pro rata share, for federal income tax purposes, of the item to which the modification relates. Where a shareholder's pro rata share of any such item is not required to be taken into account separately for federal income tax purposes, the shareholder's pro rata share of such item shall be determined in accordance with his pro rata share, for federal income tax purposes, of S corporation taxable income or loss generally;

(2) Each item of S corporation income, gain, loss, or deduction shall have the same character for a shareholder pursuant to sections 143.005 to 143.998 as it has for federal income tax purposes. Where an item is not characterized for federal income tax purposes, it shall have the same character for a shareholder as if realized directly from the source from which realized by the S corporation or incurred in the same manner as incurred by the S

corporation.

3. A nonresident shareholder of an S corporation shall determine such shareholder's Missouri nonresident adjusted gross income and his or her nonresident shareholder modification by applying the provisions of this subsection. Items shall be determined to be from sources within this state pursuant to regulations of the director of revenue in a manner consistent with the division of income provisions of [section 143.451, section 143.461, or] section 32.200, RSMo (Multistate Tax Compact). In determining the adjusted gross income of a nonresident shareholder of any S corporation, there shall be included only that part derived from or connected with sources in this state of the shareholder's pro rata share of items of S corporation income, gain, loss or deduction entering into shareholder's federal adjusted gross income, as such part is determined pursuant to regulations prescribed by the director of revenue in accordance with the general rules in section 143.181. Any modification described in subsections 2 and 3 of section 143.121 and in section 143.141, which relates to an item of S corporation income, gain, loss, or deduction shall be made in accordance with the shareholder's pro rata share, for federal income tax purposes, of the item to which the modification relates, but limited to the portion of such item derived from or connected with sources in this state.

4. The director of revenue shall permit S corporations to file composite returns and to make composite payments of tax on behalf of its nonresident shareholders not otherwise required to file a return. If the nonresident shareholder's filing requirements result solely from one or more interests in any other partnerships or subchapter S corporations, that nonresident shareholder may be included in the composite return.

5. If an S corporation pays or credits amounts to any of its nonresident individual shareholders as dividends or as their share of the S corporation's undistributed taxable income for the taxable year, the S corporation shall either timely file with the department of revenue an agreement as provided in subsection 6 of this section or withhold Missouri income tax as provided in subsection 7 of this section. An S corporation that timely files an agreement as provided in subsection 6 of this section with respect to a nonresident shareholder for a taxable year shall be considered to have timely filed such an agreement for each subsequent taxable year. An S corporation that does not timely file such an agreement for a taxable year shall not be precluded from timely filing such an agreement for subsequent taxable years. An S corporation is not required to deduct and withhold Missouri income tax for a nonresident shareholder if:

(1) The nonresident shareholder not otherwise required to file a return agrees to have the Missouri income tax due paid as part of the S corporation's composite return;

(2) The nonresident shareholder not otherwise required to file a return had Missouri assignable federal adjusted gross income from the S corporation of less than twelve hundred dollars;

- (3) The S corporation is liquidated or terminated;
- (4) Income was generated by a transaction related to termination or liquidation; or
- (5) No cash or other property was distributed in the current and prior taxable year.

6. The agreement referred to in subdivision (1) of subsection 5 of this section is an agreement of a nonresident shareholder of the S corporation to:

- (1) File a return in accordance with the provisions of section 143.481 and to make timely payment of all taxes imposed on the shareholder by this state with respect to income of the S corporation; and

- (2) Be subject to personal jurisdiction in this state for purposes of the collection of income taxes, together with related interest and penalties, imposed on the shareholder by this state with respect to the income of the S corporation.

The agreement will be considered timely filed for a taxable year, and for all subsequent taxable years, if it is filed at or before the time the annual return for such taxable year is required to be filed pursuant to section 143.511.

7. The amount of Missouri income tax to be withheld is determined by multiplying the amount of dividends or undistributed income allocable to Missouri that is paid or credited to a nonresident shareholder during the taxable year by the highest rate used to determine a Missouri income tax liability for an individual, except that the amount of the tax withheld may be determined based on withholding tables provided by the director of revenue if the shareholder submits a Missouri withholding allowance certificate.

8. An S corporation shall be entitled to recover for a shareholder on whose behalf a tax payment was made pursuant to this section, if such shareholder has no tax liability.

9. With respect to S corporations that are banks or bank holding companies, a pro rata share of the tax credit for the tax payable pursuant to chapter 148, RSMo, shall be allowed against each S corporation shareholders' state income tax as follows, provided the bank otherwise complies with section 148.112, **RSMo**:

- (1) The credit allowed by this subsection shall be equal to the bank tax calculated pursuant to chapter 148, RSMo, based on bank income in 1999 and after, on a bank that makes an election pursuant to 26 U.S.C. Section 1362, and such credit shall be allocated to the qualifying shareholder according to stock ownership, determined by multiplying a fraction, where the numerator is the shareholder's stock, and the denominator is the total stock issued by such bank or bank holding company;

- (2) The tax credit authorized in this subsection shall be permitted only to the shareholders that qualify as S corporation shareholders, provided the stock at all times during the taxable period qualifies as S corporation stock as defined in 26 U.S.C. Section 1361, and such stock is held by the shareholder during the taxable period. The credit created by this section on a yearly basis is available to each qualifying shareholder, including shareholders filing joint returns. A bank holding company is not allowed this credit, except

that, such credit shall flow through to such bank holding company's qualified shareholders, and be allocated to such shareholders under the same conditions; and

(3) In the event such shareholder cannot use all or part of the tax credit in the taxable period of receipt, such shareholder may carry forward such tax credit for a period of the lesser of five years or until used, provided such credits are used as soon as the taxpayer has Missouri taxable income.

144.010. 1. The following words, terms, and phrases when used in sections 144.010 to 144.525 have the meanings ascribed to them in this section, except when the context indicates a different meaning:

(1) "Admission", includes seats and tables, reserved or otherwise, and other similar accommodations and charges made therefor and amount paid for admission, exclusive of any admission tax imposed by the federal government or by sections 144.010 to 144.525;

(2) "Business", includes any activity engaged in by any person, or caused to be engaged in by him, with the object of gain, benefit or advantage, either direct or indirect, and the classification of which business is of such character as to be subject to the terms of sections 144.010 to 144.525. The isolated or occasional sale of tangible personal property, service, substance, or thing, by a person not engaged in such business, does not constitute engaging in business within the meaning of sections 144.010 to 144.525 unless the total amount of the gross receipts from such sales, exclusive of receipts from the sale of tangible personal property by persons which property is sold in the course of the partial or complete liquidation of a household, farm or nonbusiness enterprise, exceeds three thousand dollars in any calendar year. The provisions of this subdivision shall not be construed to make any sale of property which is exempt from sales tax or use tax on June 1, 1977, subject to that tax thereafter;

(3) **"Common carriers", a person that receives more than fifty percent of its annual revenues from fees charged to carry passengers or goods for unrelated persons. A person is unrelated to a carrier if the person is not directly or indirectly controlling, controlled by, or under common control with the carrier;**

(4) "Gross receipts", except as provided in section 144.012, means the total amount of the sale price of the sales at retail including any services other than charges incident to the extension of credit that are a part of such sales made by the businesses herein referred to, capable of being valued in money, whether received in money or otherwise; except that, the term "gross receipts" shall not include the sale price of property returned by customers when the full sale price thereof is refunded either in cash or by credit. In determining any tax due under sections 144.010 to 144.525 on the gross receipts, charges incident to the extension of credit shall be specifically exempted. For the purposes of sections 144.010 to 144.525 the total amount of the sale price above mentioned shall be deemed to be the amount received. It shall also include the lease or rental consideration where the right to continuous

possession or use of any article of tangible personal property is granted under a lease or contract and such transfer of possession would be taxable if outright sale were made and, in such cases, the same shall be taxable as if outright sale were made and considered as a sale of such article, and the tax shall be computed and paid by the lessee upon the rentals paid;

[(4)] (5) "Livestock", cattle, calves, sheep, swine, ratite birds, including but not limited to, ostrich and emu, aquatic products as defined in section 277.024, RSMo, elk documented as obtained from a legal source and not from the wild, goats, horses, other equine, or rabbits raised in confinement for human consumption;

[(5)] (6) "Motor vehicle leasing company", shall be a company obtaining a permit from the director of revenue to operate as a motor vehicle leasing company. Not all persons renting or leasing trailers or motor vehicles need to obtain such a permit; however, no person failing to obtain such a permit may avail itself of the optional tax provisions of subsection 5 of section 144.070, as hereinafter provided;

[(6)] (7) "Person", includes any individual, firm, copartnership, joint adventure, association, corporation, municipal or private, and whether organized for profit or not, state, county, political subdivision, state department, commission, board, bureau or agency, except the state transportation department, estate, trust, business trust, receiver or trustee appointed by the state or federal court, syndicate, or any other group or combination acting as a unit, and the plural as well as the singular number;

[(7)] (8) "Purchaser" [means], a person who purchases tangible personal property or to whom are rendered services, receipts from which are taxable under sections 144.010 to 144.525;

[(8)] (9) "Research or experimentation activities", are the development of an experimental or pilot model, plant process, formula, invention or similar property, and the improvement of existing property of such type. Research or experimentation activities do not include activities such as ordinary testing or inspection of materials or products for quality control, efficiency surveys, advertising promotions or research in connection with literary, historical or similar projects;

[(9)] (10) "Sale" or "sales", includes installment and credit sales, and the exchange of properties as well as the sale thereof for money, every closed transaction constituting a sale, and means any transfer, exchange or barter, conditional or otherwise, in any manner or by any means whatsoever, of tangible personal property for valuable consideration and the rendering, furnishing or selling for a valuable consideration any of the substances, things and services herein designated and defined as taxable under the terms of sections 144.010 to 144.525;

[(10)] (11) "Sale at retail" [means], any transfer made by any person engaged in business as defined herein of the ownership of, or title to, tangible personal property to the purchaser, for use or consumption and not for resale in any form as tangible personal

property, for a valuable consideration; except that, for the purposes of sections 144.010 to 144.525 and the tax imposed thereby: (i) purchases of tangible personal property made by duly licensed physicians, dentists, optometrists and veterinarians and used in the practice of their professions shall be deemed to be purchases for use or consumption and not for resale; and (ii) the selling of computer printouts, computer output or microfilm or microfiche and computer-assisted photo compositions to a purchaser to enable the purchaser to obtain for his or her own use the desired information contained in such computer printouts, computer output on microfilm or microfiche and computer-assisted photo compositions shall be considered as the sale of a service and not as the sale of tangible personal property. Where necessary to conform to the context of sections 144.010 to 144.525 and the tax imposed thereby, the term "sale at retail" shall be construed to embrace:

(a) Sales of admission tickets, cash admissions, charges and fees to or in places of amusement, entertainment and recreation, games and athletic events;

(b) Sales of electricity, electrical current, water and gas, natural or artificial, to domestic, commercial or industrial consumers;

(c) Sales of local and long distance telecommunications service to telecommunications subscribers and to others through equipment of telecommunications subscribers for the transmission of messages and conversations, and the sale, rental or leasing of all equipment or services pertaining or incidental thereto;

(d) Sales of service for transmission of messages by telegraph companies;

(e) Sales or charges for all rooms, meals and drinks furnished at any hotel, motel, tavern, inn, restaurant, eating house, drugstore, dining car, tourist camp, tourist cabin, or other place in which rooms, meals or drinks are regularly served to the public;

(f) Sales of tickets by every person operating a railroad, sleeping car, dining car, express car, boat, airplane, and such buses and trucks as are licensed by the division of motor carrier and railroad safety of the department of economic development of Missouri, engaged in the transportation of persons for hire;

[(11)] (12) "Seller" [means], a person selling or furnishing tangible personal property or rendering services, on the receipts from which a tax is imposed pursuant to section 144.020;

[(12)] (13) The noun "tax" [means], either the tax payable by the purchaser of a commodity or service subject to tax, or the aggregate amount of taxes due from the vendor of such commodities or services during the period for which he or she is required to report his or her collections, as the context may require;

[(13)] (14) "Telecommunications service", for the purpose of this chapter, the transmission of information by wire, radio, optical cable, coaxial cable, electronic impulses, or other similar means. As used in this definition, "information" means knowledge or intelligence represented by any form of writing, signs, signals, pictures, sounds, or any other

symbols. Telecommunications service does not include the following if such services are separately stated on the customer's bill or on records of the seller maintained in the ordinary course of business:

(a) Access to the Internet, access to interactive computer services or electronic publishing services, except the amount paid for the telecommunications service used to provide such access;

(b) Answering services and one-way paging services;

(c) Private mobile radio services which are not two-way commercial mobile radio services such as wireless telephone, personal communications services or enhanced specialized mobile radio services as defined pursuant to federal law; or

(d) Cable or satellite television or music services; and

[(14)] (15) "Product which is intended to be sold ultimately for final use or consumption" **[means]**, tangible personal property, or any service that is subject to state or local sales or use taxes, or any tax that is substantially equivalent thereto, in this state or any other state.

2. For purposes of the taxes imposed under sections 144.010 to 144.525, and any other provisions of law pertaining to sales or use taxes which incorporate the provisions of sections 144.010 to 144.525 by reference, the term "manufactured homes" shall have the same meaning given it in section 700.010, RSMo.

3. Sections 144.010 to 144.525 may be known and quoted as the "Sales Tax Law".

144.030. 1. There is hereby specifically exempted from the provisions of sections 144.010 to 144.525 and from the computation of the tax levied, assessed or payable pursuant to sections 144.010 to 144.525 such retail sales as may be made in commerce between this state and any other state of the United States, or between this state and any foreign country, and any retail sale which the state of Missouri is prohibited from taxing pursuant to the Constitution or laws of the United States of America, and such retail sales of tangible personal property which the general assembly of the state of Missouri is prohibited from taxing or further taxing by the constitution of this state.

2. There are also specifically exempted from the provisions of the local sales tax law as defined in section 32.085, RSMo, section 238.235, RSMo, and sections 144.010 to 144.525 and 144.600 to 144.745 and from the computation of the tax levied, assessed or payable pursuant to the local sales tax law as defined in section 32.085, RSMo, section 238.235, RSMo, and sections 144.010 to 144.525 and 144.600 to 144.745:

(1) Motor fuel or special fuel subject to an excise tax of this state, unless all or part of such excise tax is refunded pursuant to section 142.584, RSMo; or upon the sale at retail of fuel to be consumed in manufacturing or creating gas, power, steam, electrical current or in furnishing water to be sold ultimately at retail; or feed for livestock or poultry; or grain to be converted into foodstuffs which are to be sold ultimately in processed form at retail; or

seed, limestone or fertilizer which is to be used for seeding, liming or fertilizing crops which when harvested will be sold at retail or will be fed to livestock or poultry to be sold ultimately in processed form at retail; economic poisons registered pursuant to the provisions of the Missouri pesticide registration law (sections 281.220 to 281.310, RSMo) which are to be used in connection with the growth or production of crops, fruit trees or orchards applied before, during, or after planting, the crop of which when harvested will be sold at retail or will be converted into foodstuffs which are to be sold ultimately in processed form at retail;

(2) Materials, manufactured goods, machinery and parts which when used in manufacturing, processing, compounding, mining, producing or fabricating become a component part or ingredient of the new personal property resulting from such manufacturing, processing, compounding, mining, producing or fabricating and which new personal property is intended to be sold ultimately for final use or consumption; and materials, including without limitation, gases and manufactured goods, including without limitation, slagging materials and firebrick, which are ultimately consumed in the manufacturing process by blending, reacting or interacting with or by becoming, in whole or in part, component parts or ingredients of steel products intended to be sold ultimately for final use or consumption;

(3) Materials, replacement parts and equipment purchased for use directly upon, and for the repair and maintenance or manufacture of, motor vehicles, watercraft, railroad rolling stock or aircraft engaged as common carriers of persons or property;

(4) Replacement machinery, equipment, and parts and the materials and supplies solely required for the installation or construction of such replacement machinery, equipment, and parts, used directly in manufacturing, mining, fabricating or producing a product which is intended to be sold ultimately for final use or consumption; and machinery and equipment, and the materials and supplies required solely for the operation, installation or construction of such machinery and equipment, purchased and used to establish new, or to replace or expand existing, material recovery processing plants in this state. For the purposes of this subdivision, a "material recovery processing plant" means a facility which converts recovered materials into a new product, or a different form which is used in producing a new product, and shall include a facility or equipment which is used exclusively for the collection of recovered materials for delivery to a material recovery processing plant but shall not include motor vehicles used on highways. For purposes of this section, the terms "motor vehicle" and "highway" shall have the same meaning pursuant to section 301.010, RSMo;

(5) Machinery and equipment, and parts and the materials and supplies solely required for the installation or construction of such machinery and equipment, purchased and used to establish new or to expand existing manufacturing, mining or fabricating plants in the state if such machinery and equipment is used directly in manufacturing, mining or fabricating a product which is intended to be sold ultimately for final use or consumption;

(6) Tangible personal property which is used exclusively in the manufacturing, processing, modification or assembling of products sold to the United States government or to any agency of the United States government;

(7) Animals or poultry used for breeding or feeding purposes;

(8) Newsprint, ink, computers, photosensitive paper and film, toner, printing plates and other machinery, equipment, replacement parts and supplies used in producing newspapers published for dissemination of news to the general public;

(9) The rentals of films, records or any type of sound or picture transcriptions for public commercial display;

(10) Pumping machinery and equipment used to propel products delivered by pipelines engaged as common carriers;

(11) Railroad rolling stock for use in transporting persons or property in interstate commerce and motor vehicles licensed for a gross weight of twenty-four thousand pounds or more or trailers used by common carriers[, as defined in section 390.020, RSMo,] solely in the transportation of persons or property in interstate commerce;

(12) Electrical energy used in the actual primary manufacture, processing, compounding, mining or producing of a product, or electrical energy used in the actual secondary processing or fabricating of the product, or a material recovery processing plant as defined in subdivision (4) of this subsection, in facilities owned or leased by the taxpayer, if the total cost of electrical energy so used exceeds ten percent of the total cost of production, either primary or secondary, exclusive of the cost of electrical energy so used or if the raw materials used in such processing contain at least twenty-five percent recovered materials as defined in section 260.200, RSMo. For purposes of this subdivision, "processing" means any mode of treatment, act or series of acts performed upon materials to transform and reduce them to a different state or thing, including treatment necessary to maintain or preserve such processing by the producer at the production facility;

(13) Anodes which are used or consumed in manufacturing, processing, compounding, mining, producing or fabricating and which have a useful life of less than one year;

(14) Machinery, equipment, appliances and devices purchased or leased and used solely for the purpose of preventing, abating or monitoring air pollution, and materials and supplies solely required for the installation, construction or reconstruction of such machinery, equipment, appliances and devices, and so certified as such by the director of the department of natural resources, except that any action by the director pursuant to this subdivision may be appealed to the air conservation commission which may uphold or reverse such action;

(15) Machinery, equipment, appliances and devices purchased or leased and used solely for the purpose of preventing, abating or monitoring water pollution, and materials and supplies solely required for the installation, construction or reconstruction of such machinery, equipment, appliances and devices, and so certified as such by the director of the department

of natural resources, except that any action by the director pursuant to this subdivision may be appealed to the Missouri clean water commission which may uphold or reverse such action;

(16) Tangible personal property purchased by a rural water district;

(17) All amounts paid or charged for admission or participation or other fees paid by or other charges to individuals in or for any place of amusement, entertainment or recreation, games or athletic events, including museums, fairs, zoos and planetariums, owned or operated by a municipality or other political subdivision where all the proceeds derived therefrom benefit the municipality or other political subdivision and do not inure to any private person, firm, or corporation;

(18) All sales of insulin and prosthetic or orthopedic devices as defined on January 1, 1980, by the federal Medicare program pursuant to Title XVIII of the Social Security Act of 1965, including the items specified in Section 1862(a)(12) of that act, and also specifically including hearing aids and hearing aid supplies and all sales of drugs which may be legally dispensed by a licensed pharmacist only upon a lawful prescription of a practitioner licensed to administer those items, including samples and materials used to manufacture samples which may be dispensed by a practitioner authorized to dispense such samples and all sales of medical oxygen, home respiratory equipment and accessories, hospital beds and accessories and ambulatory aids, all sales of manual and powered wheelchairs, stairway lifts, Braille writers, electronic Braille equipment and, if purchased by or on behalf of a person with one or more physical or mental disabilities to enable them to function more independently, all sales of scooters, reading machines, electronic print enlargers and magnifiers, electronic alternative and augmentative communication devices, and items used solely to modify motor vehicles to permit the use of such motor vehicles by individuals with disabilities or sales of over-the-counter or nonprescription drugs to individuals with disabilities;

(19) All sales made by or to religious and charitable organizations and institutions in their religious, charitable or educational functions and activities and all sales made by or to all elementary and secondary schools operated at public expense in their educational functions and activities;

(20) All sales of aircraft to common carriers for storage or for use in interstate commerce and all sales made by or to not-for-profit civic, social, service or fraternal organizations, including fraternal organizations which have been declared tax-exempt organizations pursuant to Section 501(c)(8) or (10) of the 1986 Internal Revenue Code, as amended, solely in their civic or charitable functions and activities and all sales made to eleemosynary and penal institutions and industries of the state, and all sales made to any private not-for-profit institution of higher education not otherwise excluded pursuant to subdivision (19) of this subsection or any institution of higher education supported by public funds, and all sales made to a state relief agency in the exercise of relief functions and

activities;

(21) All ticket sales made by benevolent, scientific and educational associations which are formed to foster, encourage, and promote progress and improvement in the science of agriculture and in the raising and breeding of animals, and by nonprofit summer theater organizations if such organizations are exempt from federal tax pursuant to the provisions of the Internal Revenue Code and all admission charges and entry fees to the Missouri state fair or any fair conducted by a county agricultural and mechanical society organized and operated pursuant to sections 262.290 to 262.530, RSMo;

(22) All sales made to any private not-for-profit elementary or secondary school, all sales of feed additives, medications or vaccines administered to livestock or poultry in the production of food or fiber, all sales of pesticides used in the production of crops, livestock or poultry for food or fiber, all sales of bedding used in the production of livestock or poultry for food or fiber, all sales of propane or natural gas, electricity or diesel fuel used exclusively for drying agricultural crops, natural gas used in the primary manufacture or processing of fuel ethanol as defined in section 142.028, RSMo, and all sales of farm machinery and equipment, other than airplanes, motor vehicles and trailers. As used in this subdivision, the term "feed additives" means tangible personal property which, when mixed with feed for livestock or poultry, is to be used in the feeding of livestock or poultry. As used in this subdivision, the term "pesticides" includes adjuvants such as crop oils, surfactants, wetting agents and other assorted pesticide carriers used to improve or enhance the effect of a pesticide and the foam used to mark the application of pesticides and herbicides for the production of crops, livestock or poultry. As used in this subdivision, the term "farm machinery and equipment" means new or used farm tractors and such other new or used farm machinery and equipment and repair or replacement parts thereon, and supplies and lubricants used exclusively, solely, and directly for producing crops, raising and feeding livestock, fish, poultry, pheasants, chukar, quail, or for producing milk for ultimate sale at retail and one-half of each purchaser's purchase of diesel fuel therefor which is:

(a) Used exclusively for agricultural purposes;

(b) Used on land owned or leased for the purpose of producing farm products; and

(c) Used directly in producing farm products to be sold ultimately in processed form or otherwise at retail or in producing farm products to be fed to livestock or poultry to be sold ultimately in processed form at retail;

(23) Except as otherwise provided in section 144.032, all sales of metered water service, electricity, electrical current, natural, artificial or propane gas, wood, coal or home heating oil for domestic use and in any city not within a county, all sales of metered or unmetered water service for domestic use;

(a) "Domestic use" means that portion of metered water service, electricity, electrical current, natural, artificial or propane gas, wood, coal or home heating oil, and in any city not

within a county, metered or unmetered water service, which an individual occupant of a residential premises uses for nonbusiness, noncommercial or nonindustrial purposes. Utility service through a single or master meter for residential apartments or condominiums, including service for common areas and facilities and vacant units, shall be deemed to be for domestic use. Each seller shall establish and maintain a system whereby individual purchases are determined as exempt or nonexempt;

(b) Regulated utility sellers shall determine whether individual purchases are exempt or nonexempt based upon the seller's utility service rate classifications as contained in tariffs on file with and approved by the Missouri public service commission. Sales and purchases made pursuant to the rate classification "residential" and sales to and purchases made by or on behalf of the occupants of residential apartments or condominiums through a single or master meter, including service for common areas and facilities and vacant units, shall be considered as sales made for domestic use and such sales shall be exempt from sales tax. Sellers shall charge sales tax upon the entire amount of purchases classified as nondomestic use. The seller's utility service rate classification and the provision of service thereunder shall be conclusive as to whether or not the utility must charge sales tax;

(c) Each person making domestic use purchases of services or property and who uses any portion of the services or property so purchased for a nondomestic use shall, by the fifteenth day of the fourth month following the year of purchase, and without assessment, notice or demand, file a return and pay sales tax on that portion of nondomestic purchases. Each person making nondomestic purchases of services or property and who uses any portion of the services or property so purchased for domestic use, and each person making domestic purchases on behalf of occupants of residential apartments or condominiums through a single or master meter, including service for common areas and facilities and vacant units, under a nonresidential utility service rate classification may, between the first day of the first month and the fifteenth day of the fourth month following the year of purchase, apply for credit or refund to the director of revenue and the director shall give credit or make refund for taxes paid on the domestic use portion of the purchase. The person making such purchases on behalf of occupants of residential apartments or condominiums shall have standing to apply to the director of revenue for such credit or refund;

(24) All sales of handicraft items made by the seller or the seller's spouse if the seller or the seller's spouse is at least sixty-five years of age, and if the total gross proceeds from such sales do not constitute a majority of the annual gross income of the seller;

(25) Excise taxes, collected on sales at retail, imposed by Sections 4041, 4061, 4071, 4081, 4091, 4161, 4181, 4251, 4261 and 4271 of Title 26, United States Code. The director of revenue shall promulgate rules pursuant to chapter 536, RSMo, to eliminate all state and local sales taxes on such excise taxes;

(26) Sales of fuel consumed or used in the operation of ships, barges, or waterborne

vessels which are used primarily in or for the transportation of property or cargo, or the conveyance of persons for hire, on navigable rivers bordering on or located in part in this state, if such fuel is delivered by the seller to the purchaser's barge, ship, or waterborne vessel while it is afloat upon such river;

(27) All sales made to an interstate compact agency created pursuant to sections 70.370 to 70.430, RSMo, or sections 238.010 to 238.100, RSMo, in the exercise of the functions and activities of such agency as provided pursuant to the compact;

(28) Computers, computer software and computer security systems purchased for use by architectural or engineering firms headquartered in this state. For the purposes of this subdivision, "headquartered in this state" means the office for the administrative management of at least four integrated facilities operated by the taxpayer is located in the state of Missouri;

(29) All livestock sales when either the seller is engaged in the growing, producing or feeding of such livestock, or the seller is engaged in the business of buying and selling, bartering or leasing of such livestock;

(30) All sales of barges which are to be used primarily in the transportation of property or cargo on interstate waterways;

(31) Electrical energy or gas, whether natural, artificial or propane, which is ultimately consumed in connection with the manufacturing of cellular glass products;

(32) Notwithstanding other provisions of law to the contrary, all sales of pesticides or herbicides used in the production of crops, aquaculture, livestock or poultry;

(33) Tangible personal property purchased for use or consumption directly or exclusively in the research and development of prescription pharmaceuticals consumed by humans or animals;

(34) All sales of grain bins for storage of grain for resale;

(35) All sales of feed which are developed for and used in the feeding of pets owned by a commercial breeder when such sales are made to a commercial breeder, as defined in section 273.325, RSMo, and licensed pursuant to sections 273.325 to 273.357, RSMo;

(36) All purchases by a contractor on behalf of an entity located in another state, provided that the entity is authorized to issue a certificate of exemption for purchases to a contractor under the provisions of that state's laws. For purposes of this subdivision, the term "certificate of exemption" shall mean any document evidencing that the entity is exempt from sales and use taxes on purchases pursuant to the laws of the state in which the entity is located. Any contractor making purchases on behalf of such entity shall maintain a copy of the entity's exemption certificate as evidence of the exemption. If the exemption certificate issued by the exempt entity to the contractor is later determined by the director of revenue to be invalid for any reason and the contractor has accepted the certificate in good faith, neither the contractor or the exempt entity shall be liable for the payment of any taxes,

interest and penalty due as the result of use of the invalid exemption certificate. Materials shall be exempt from all state and local sales and use taxes when purchased by a contractor for the purpose of fabricating tangible personal property which is used in fulfilling a contract for the purpose of constructing, repairing or remodeling facilities for the following:

(a) An exempt entity located in this state, if the entity is one of those entities able to issue project exemption certificates in accordance with the provisions of section 144.062; or

(b) An exempt entity located outside the state if the exempt entity is authorized to issue an exemption certificate to contractors in accordance with the provisions of that state's law and the applicable provisions of this section;

(37) Tangible personal property purchased for use or consumption directly or exclusively in research or experimentation activities performed by life science companies and so certified as such by the director of the department of economic development or the director's designees; except that, the total amount of exemptions certified pursuant to this section shall not exceed one million three hundred thousand dollars in state and local taxes per fiscal year. For purposes of this subdivision, the term "life science companies" means companies whose primary research activities are in agriculture, pharmaceuticals, biomedical or food ingredients, and whose North American Industry Classification System (NAICS) Codes fall under industry 541710 (biotech research or development laboratories), 621511 (medical laboratories) or 541940 (veterinary services). The exemption provided by this subdivision shall expire on June 30, 2003.

144.190. 1. If a tax has been incorrectly computed by reason of a clerical error or mistake on the part of the director of revenue, such fact shall be set forth in the records of the director of revenue, and the amount of the overpayment shall be credited on any taxes then due from the person legally obligated to remit the tax pursuant to sections 144.010 to 144.525, and the balance shall be refunded to the person legally obligated to remit the tax, such person's administrators or executors, as provided for in section 144.200.

2. If any tax, penalty or interest has been paid more than once, or has been erroneously or illegally collected, or has been erroneously or illegally computed, such sum shall be credited on any taxes then due from the person legally obligated to remit the tax pursuant to sections 144.010 to 144.525, and the balance, with interest as determined by [section 32.065] **sections 32.068 and 32.069**, RSMo, shall be refunded to the person legally obligated to remit the tax, but no such credit or refund shall be allowed unless duplicate copies of a claim for refund are filed within three years from date of overpayment.

3. Every claim for refund must be in writing and signed by the applicant, and must state the specific grounds upon which the claim is founded. Any refund or any portion thereof which is erroneously made, and any credit or any portion thereof which is erroneously allowed, may be recovered in any action brought by the director of revenue against the person

legally obligated to remit the tax. In the event that a tax has been illegally imposed against a person legally obligated to remit the tax, the director of revenue shall authorize the cancellation of the tax upon the director's record.

4. Notwithstanding the provisions of this section, the director of revenue shall authorize direct-pay agreements to purchasers which have annual purchases in excess of seven hundred fifty thousand dollars pursuant to rules and regulations adopted by the director of revenue. For the purposes of such direct-pay agreements, the taxes authorized pursuant to chapters 66, 67, 70, 92, 94, 162, 190, 238, 321, and 644, RSMo, shall be remitted based upon the location of the place of business of the purchaser.

5. Special rules applicable to error corrections requested by customers of mobile telecommunications service are as follows:

(1) For purposes of this subsection, the terms "customer", "home service provider", "place of primary use", "electronic database", and "enhanced zip code" shall have the same meanings as defined in the Mobile Telecommunications Sourcing Act incorporated by reference in section 144.013;

(2) Notwithstanding the provisions of this section, if a customer of mobile telecommunications services believes that the amount of tax, the assignment of place of primary use or the taxing jurisdiction included on a billing is erroneous, the customer shall notify the home service provider, in writing, within three years from the date of the billing statement. The customer shall include in such written notification the street address for the customer's place of primary use, the account name and number for which the customer seeks a correction of the tax assignment, a description of the error asserted by the customer and any other information the home service provider reasonably requires to process the request;

(3) Within sixty days of receiving the customer's notice, the home service provider shall review its records and the electronic database or enhanced zip code to determine the customer's correct taxing jurisdiction. If the home service provider determines that the review shows that the amount of tax, assignment of place of primary use or taxing jurisdiction is in error, the home service provider shall correct the error and, at its election, either refund or credit the amount of tax erroneously collected to the customer for a period of up to three years from the last day of the home service provider's sixty-day review period. If the home service provider determines that the review shows that the amount of tax, the assignment of place of primary use or the taxing jurisdiction is correct, the home service provider shall provide a written explanation of its determination to the customer.

6. [For all refund claims submitted to the department of revenue on or after September 1, 2003, notwithstanding any provision of this section to the contrary, if a person legally obligated to remit the tax levied pursuant to sections 144.010 to 144.525 has received a refund of such taxes for a specific issue and submits a subsequent claim for refund of such taxes on the same issue for a tax period beginning on or after the date the original refund

check issued to such person, no refund shall be allowed. This subsection shall not apply and a refund shall be allowed if an additional refund claim is filed due to any of the following:

(1) Receipt of additional information or an exemption certificate from the purchaser of the item at issue;

(2) A decision of a court of competent jurisdiction or the administrative hearing commission; or

(3) Changes in regulations or policy by the department of revenue.] **Except as provided in subsection 8 of this section, if any tax was paid more than once, was incorrectly collected, or was incorrectly computed, such sum shall be credited on any taxes then due from the person legally obligated to remit the tax pursuant to sections 144.010 to 144.510 and the remainder, refunded, with interest as determined under chapter 32, RSMo, to the person legally obligated to remit the tax, provided that duplicate copies of a claim for refund are filed within three years from date of overpayment and:**

(1) **Where the total claim for refund is over one thousand dollars for any five year period, the person legally obligated to remit the tax demonstrates to the satisfaction of the director of revenue that all incorrectly collected or incorrectly computed amounts were or will be refunded or credited to every purchaser that originally paid the tax; or**

(2) **The person legally obligated to remit the tax submits to the director duplicate copies of a claim for refund and amended tax returns showing the correct amount of gross receipts for each reporting period originally filed and proves to the director's satisfaction that the tax originally reported and remitted to the director was paid by such person claiming the refund or credit and was not collected from purchasers.**

7. Notwithstanding any provision of law to the contrary, the director of revenue shall respond to a request for a binding letter ruling filed in accordance with section 536.021, RSMo, within sixty days of receipt of such request. If the director of revenue fails to respond to such letter ruling request within sixty days of receipt by the director, the director of revenue shall be barred from pursuing collection of any assessment of sales or use tax with respect to the issue which is the subject of the letter ruling request. For purposes of this subsection, the term "letter ruling" means a written interpretation of law by the director to a specific set of facts provided by a specific taxpayer or his or her agent.

8. **In lieu of subsection 6 of this section,** if any tax was paid more than once, was incorrectly collected, or was incorrectly computed, such sum shall be credited on any taxes then due from the person legally obligated to remit the tax pursuant to sections 144.010 to 144.510, [against any deficiency or tax due discovered through an audit of the person by the department of revenue through adjustment during the same tax filing period for which the

audit applied] or refunded, with interest as determined by sections 32.068 and 32.069, RSMo, to the person legally obligated to remit the tax only if duplicate copies of a claim for a refund and amended tax returns are filed within three years from the date of overpayment and the person legally obligated to remit the tax submits a plan acceptable to the director to generally refund the amount of overpayment to future customers of the person by mutually agreed to distribution of a fixed value coupon to such customers.

[143.261. For every remittance to the director of revenue made on or before the date the remittance becomes due, the employer, other than the United States and its agencies, the state of Missouri and political subdivisions thereof, may deduct and retain the following percentages of the total amount of tax withheld and paid in each calendar year:

- (1) Two percent of five thousand dollars or less;
- (2) One percent of amount collected in excess of five thousand dollars and up to and including ten thousand dollars;
- (3) One-half percent of amount collected in excess of ten thousand dollars.]

[143.451. 1. Missouri taxable income of a corporation shall include all income derived from sources within this state.

2. A corporation described in subdivision (1) of subsection 1 of section 143.441 shall include in its Missouri taxable income all income from sources within this state, including that from the transaction of business in this state and that from the transaction of business partly done in this state and partly done in another state or states. However:

(1) Where income results from a transaction partially in this state and partially in another state or states, and income and deductions of the portion in the state cannot be segregated, then such portions of income and deductions shall be allocated in this state and the other state or states as will distribute to this state a portion based upon the portion of the transaction in this state and the portion in such other state or states.

(2) The taxpayer may elect to compute the portion of income from all sources in this state in the following manner:

(a) The income from all sources shall be determined as provided, excluding therefrom the figures for the operation of any bridge connecting this state with another state.

(b) The amount of sales which are transactions wholly in this state shall be added to one-half of the amount of sales which are transactions partly within this state and partly without this state, and the amount thus obtained

shall be divided by the total sales or in cases where sales do not express the volume of business, the amount of business transacted wholly in this state shall be added to one-half of the amount of business transacted partly in this state and partly outside this state and the amount thus obtained shall be divided by the total amount of business transacted, and the net income shall be multiplied by the fraction thus obtained, to determine the proportion of income to be used to arrive at the amount of Missouri taxable income. The investment or reinvestment of its own funds, or sale of any such investment or reinvestment, shall not be considered as sales or other business transacted for the determination of said fraction.

(3) For the purposes of this section, a transaction involving the sale of tangible property is:

(a) "Wholly in this state" if both the seller's shipping point and the purchaser's destination point are in this state;

(b) "Partly within this state and partly without this state" if the seller's shipping point is in this state and the purchaser's destination point is outside this state, or the seller's shipping point is outside this state and the purchaser's destination point is in this state;

(c) Not "wholly in this state" or not "partly within this state and partly without this state" only if both the seller's shipping point and the purchaser's destination point are outside this state;

(d) For purposes of this subdivision the purchaser's destination point shall be determined without regard to the FOB point or other conditions of the sale, and the seller's shipping point is determined without regard to the location of the seller's principle office or place of business.

(4) For purposes of this subsection, the following words shall, unless the context otherwise requires, have the following meaning:

(a) "Administration services" include, but are not limited to, clerical, fund or shareholder accounting, participant record keeping, transfer agency, bookkeeping, data processing, custodial, internal auditing, legal and tax services performed for an investment company;

(b) "Affiliate", the meaning as set forth in 15 U.S.C. Section 80a-2(a)(3)(C), as may be amended from time to time;

(c) "Distribution services" include, but are not limited to, the services of advertising, servicing, marketing, underwriting or selling shares of an investment company, but, in the case of advertising, servicing or marketing shares, only where such service is performed by a person who is, or in the case of a closed end company, was, either engaged in the services of underwriting

or selling investment company shares or affiliated with a person that is engaged in the service of underwriting or selling investment company shares. In the case of an open end company, such service of underwriting or selling shares must be performed pursuant to a contract entered into pursuant to 15 U.S.C. Section 80a-15(b), as from time to time amended;

(d) "Investment company", any person registered under the federal Investment Company Act of 1940, as amended from time to time, (the act) or a company which would be required to register as an investment company under the act except that such person is exempt to such registration pursuant to Section 80a-3(c)(1) of the act;

(e) "Investment funds service corporation" includes any corporation or S corporation doing business in the state which derives more than fifty percent of its gross income in the ordinary course of business from the provision directly or indirectly of management, distribution or administration services to or on behalf of an investment company or from trustees, sponsors and participants of employee benefit plans which have accounts in an investment company. An investment funds service corporation shall include any corporation or S corporation providing management services as an investment advisory firm registered under Section 203 of the Investment Advisors Act of 1940, as amended from time to time, regardless of the percentage of gross revenues consisting of fees from management services provided to or on behalf of an investment company;

(f) "Management services" include but are not limited to, the rendering of investment advice directly or indirectly to an investment company making determinations as to when sales and purchases of securities are to be made on behalf of the investment company, or the selling or purchasing of securities constituting assets of an investment company, and related activities, but only where such activity or activities are performed:

a. Pursuant to a contract with the investment company entered into pursuant to 15 U.S.C. Section 80a-15(a), as from time to time amended;

b. For a person that has entered into such contract with the investment company; or

c. For a person that is affiliated with a person that has entered into such contract with an investment company;

(g) "Qualifying sales", gross income derived from the provision directly or indirectly of management, distribution or administration services to or on behalf of an investment company or from trustees, sponsors and participants of employee benefit plans which have accounts in an investment company. For

purposes of this section, gross income is defined as that amount of income earned from qualifying sources without deduction of expenses related to the generation of such income;

(h) "Residence", presumptively the fund shareholder's mailing address on the records of the investment company. If, however, the investment company or the investment funds service corporation has actual knowledge that the fund shareholder's primary residence or principal place of business is different than the fund shareholder's mailing address such presumption shall not control. To the extent an investment funds service corporation does not have access to the records of the investment company, the investment funds service corporation may employ reasonable methods to determine the investment company fund shareholder's residence.

(5) Notwithstanding other provisions of law to the contrary, qualifying sales of an investment funds service corporation, or S corporation, shall be considered wholly in this state only to the extent that the fund shareholders of the investment companies, to which the investment funds service corporation, or S corporation, provide services, are resided in this state. Wholly in this state qualifying sales of an investment funds service corporation, or S corporation, shall be determined as follows:

(a) By multiplying the investment funds service corporation's total dollar amount of qualifying sales from services provided to each investment company by a fraction, the numerator of which shall be the average of the number of shares owned by the investment company's fund shareholders resided in this state at the beginning of and at the end of the investment company's taxable year that ends with or within the investment funds service corporation's taxable year, and the denominator of which shall be the average of the number of shares owned by the investment company's fund shareholders everywhere at the beginning of and at the end of the investment company's taxable year that ends with or within the investment funds service corporation's taxable year;

(b) A separate computation shall be made to determine the wholly in this state qualifying sales from each investment company. The qualifying sales for each investment company shall be multiplied by the respective percentage of each fund, as calculated pursuant to paragraph (a) of this subdivision. The product of this equation shall result in the wholly in this state qualifying sales. The qualifying sales for each investment company which are not wholly in this state will be considered wholly without this state;

(c) To the extent an investment funds service corporation has sales

which are not qualifying sales, those nonqualified sales shall be apportioned to this state based on the methodology utilized by the investment funds service corporation without regard to this subdivision.

3. Any corporation described in subdivision (1) of subsection 1 of section 143.441 organized in this state or granted a permit to operate in this state for the transportation or care of passengers shall report its gross earnings within the state on intrastate business and shall also report its gross earnings on all interstate business done in this state which report shall be subject to inquiry for the purpose of determining the amount of income to be included in Missouri taxable income. The previous sentence shall not apply to a railroad.

4. A corporation described in subdivision (2) of subsection 1 of section 143.441 shall include in its Missouri taxable income all income arising from all sources in this state and all income from each transportation service wholly within this state, from each service where the only lines of such corporation used are those in this state, and such proportion of revenue from each service where the facilities of such corporation in this state and in another state or states are used, as the mileage used over the lines of such corporation in the state shall bear to the total mileage used over the lines of such corporation. The taxpayer may elect to compute the portion of income from all sources within this state in the following manner:

(1) The income from all sources shall be determined as provided;

(2) The amount of investment of such corporation on December thirty-first of each year in this state in fixed transportation facilities, real estate and improvements, plus the value on December thirty-first of each year of any fixed transportation facilities, real estate and improvements in this state leased from any other railroad shall be divided by the sum of the total amount of investment of such corporation on December thirty-first of each year in fixed transportation facilities, real estate and improvements, plus the value on December thirty-first of each year, of any fixed transportation facilities, real estate and improvements leased from any other railroad. Where any fixed transportation facilities, real estate or improvements are leased by more than one railroad, such portion of the value shall be used by each railroad as the rental paid by each shall bear to the rental paid by all lessees. The income shall be multiplied by the fraction thus obtained to determine the proportion to be used to arrive at the amount of Missouri taxable income.

5. A corporation described in subdivision (3) of subsection 1 of section 143.441 shall include in its Missouri taxable income one-half of the net income from the operation of a bridge between this and another state. If any such

bridge is owned or operated by a railroad corporation or corporations, or by a corporation owning a railroad corporation using such bridge, then the figures for operation of such bridge may be included in the return of such railroad or railroads; or if such bridge is owned or operated by any other corporation which may now or hereafter be required to file an income tax return, one-half of the income or loss to such corporation from such bridge may be included in such return by adding or subtracting same to or from another net income or loss shown by the return.

6. A corporation described in subdivision (4) of subsection 1 of section 143.441 shall include in its Missouri taxable income all income arising from all sources within this state. Income shall include revenue from each telephonic or telegraphic service rendered wholly within this state; from each service rendered for which the only facilities of such corporation used are those in this state; and from each service rendered over the facilities of such corporation in this state and in other state or states, such proportion of such revenue as the mileage involved in this state shall bear to the total mileage involved over the lines of said company in all states. The taxpayer may elect to compute the portion of income from all sources within this state in the following manner:

(1) The income from all sources shall be determined as provided;

(2) The amount of investment of such corporation on December thirty-first of each year in this state in telephonic or telegraphic facilities, real estate and improvements thereon, shall be divided by the amount of the total investment of such corporation on December thirty-first of each year in telephonic or telegraphic facilities, real estate and improvements. The income of the taxpayer shall be multiplied by fraction thus obtained to determine the proportion to be used to arrive at the amount of Missouri taxable income.

7. From the income determined in subsections 2, 3, 4, 5 and 6 of this section to be from all sources within this state shall be deducted such of the deductions for expenses in determining Missouri taxable income as were incurred in this state to produce such income and all losses actually sustained in this state in the business of the corporation.

8. If a corporation derives only part of its income from sources within Missouri, its Missouri taxable income shall only reflect the effect of the following listed deductions to the extent applicable to Missouri. The deductions are: (a) its deduction for federal income taxes pursuant to section 143.171, and (b) the effect on Missouri taxable income of the deduction for net operating loss allowed by Section 172 of the Internal Revenue Code. The extent applicable to Missouri shall be determined by multiplying the amount

that would otherwise affect Missouri taxable income by the ratio for the year of the Missouri taxable income of the corporation for the year divided by the Missouri taxable income for the year as though the corporation had derived all of its income from sources within Missouri. For the purpose of the preceding sentence, Missouri taxable income shall not reflect the listed deductions.

9. Any investment funds service corporation organized as a corporation or S corporation which has any shareholders resided in this state shall be subject to Missouri income tax as provided in this chapter.]

[143.461. 1. A corporation shall elect to determine income applicable to this state by multiplying the total income from all sources by the fraction determined in the manner in section 143.451; first, by filing written notice with the director of revenue on or before the due date of the return (including extensions of time) of the taxpayer's election, or, second, by failing to keep its books and records in such manner as to show the income applicable to this state, including gross income and deductions applicable thereto.

2. If the corporation shall keep its books and records so as to show by any other method of allocation between this state and other states involved of income from transactions partially within and partially without this state, including gross income and deductions applicable thereto, and such method shows the income applicable to this state, including gross income and deductions applicable thereto, then it may, on or before sixty days before the end of any taxable year, petition the director of revenue, in writing, to be permitted in its return required to be filed to apportion to this state according to the method shown by such books or records. If the director of revenue finds that such method does show the income applicable to this state including gross income and the deductions applicable thereto, he shall notify the corporation, at least thirty days prior to the last day on which such corporation's return for that taxable year is to be filed, that it may use that method as long as such method shows the income applicable to this state, including gross income and deductions applicable thereto.

3. The corporation shall cease using such method whenever the director of revenue finds and notifies such corporation on or before ninety days before the end of the taxable year, that such method does not so show. Upon and after such revocation the corporation shall be permitted to petition to use another method of allocation that will show such income including gross income and deductions applicable thereto as though no petition had ever been filed.

4. Failure, after a method has been revoked by the director of revenue,

to submit a method which the director of revenue finds will show such income applicable to this state including gross income and deductions applicable thereto, on or before sixty days before the end of any taxable year, or failure to make a return on the basis, which has been approved by the director of revenue on petition of the corporation and which stands unrevoked, shall constitute an election to accept the determination of income applicable to this state by multiplying the total income from all sources by the fraction determined in the manner set forth in section 143.451.]

Section B. Section A of this act shall become effective September 1, 2005.

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